

Contributions to Civil Service Retirement Plans

On April 26, 1972, the Internal Revenue Service ruled (Rev. Rul. 72-250, I.R.B. 1972-21, 6) that the portion of a United States Government employee's compensation that is withheld and contributed to the U. S. Civil Service Retirement and Disability Fund is income in the taxable year withheld and contributed just as if it were paid to the employee directly.

That ruling reiterates the current as well as the long-standing IRS position on this issue based on court decisions and a 1956 ruling (Rev. Rul. 56, 473, C.B. 1956-2, 22). The court cases are cited as Cecil W. Taylor v. Commissioner, 2 T.C. 267 (1943), affirmed sub nom. Malcom D. Miller, et al. v. Commissioner, 144 F. 2d 287 (1944); and Isaiah Megibow, et ux. v. Commissioner, 218 F. 2d 687 (1955).

The IRS position is the same with regard to employee contributions to similar State and local governmental retirement plans.

There is litigation on the issue currently pending before the U.S. Tax Court and a U.S. District court. It is expected that the court cases will be protracted and that the losing parties will appeal. Thus, it may be years before the issue is resolved finally by the courts.

Taxpayers who do not agree with the IRS position and wish to make claim for refund of income taxes previously paid on their contributions to the Retirement and Disability Fund can do so by filing Form 843. In general, Form 843 must be filed on or before April 16, 1973 to claim a refund of taxes paid for the year 1969. Likewise, claims for 1970 must be filed on or before April 15, 1974.

Taxpayers should not reduce income on 1972 income tax returns by deducting or excluding their contributions to the Retirement and Disability Fund. The IRS will identify returns reflecting such deductions or exclusions and process those returns under its "Unallowable Items Program." The reduction in income will not be allowed and any refund otherwise allowable will be delayed.

Instructions for Form 843 are on the reverse side of the form. In completing item "i", which is the amount to be refunded, the taxpayer may insert the exact amount of refund being claimed or "In excess of \$1". In completing item "k", the explanation for the claim, the IRS will accept the following as adequate to cover a claim based on contributions to the U.S. Retirement and Disability Fund:

"Taxpayer, a Federal employee, is entitled to exclude his contribution to the U.S. Civil Service Retirement and Disability Fund from his income for tax year 19-- . I believe the IRS position taken in Rev. Rul. 72-250, I.R.B. 1972-21, 6, is in error."